

Message Text

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ACTION OES-02

INFO OCT-01 IO-06 ISO-00 SS-14 SSO-00 INR-05 INRE-00
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TO SECSTATE WASHDC IMMEDIATE 8683

C O N F I D E N T I A L SECTION 01 OF 02 GENEVA 06032

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E.O. 11652: GDS
TAGS: PLOS, SENV
SUBJECT: LAW OF THE SEA - RESIDUAL FOREIGN RELATIONS
IMPLICATIONS OF CLEAN WATER ACT AND SUPERFUND ISSUES

PASS TO OES, ASSISTANT SECRETARY MINK, FROM JAMES BROWN,
LOS DEL

REF: TELCON 4/20, ASSISTANT SECRETARY MINK/JAMES BROWN

1. FOLLOWING REPORT FROM JAMES BROWN, LOSDEL, AS REQUESTED
IN REFERENCED TELCON.

2. AS TO THE CLEAN WATER ACT OF 1977 AMENDMENTS TO
SECTION 311 OF THE FWPCA, THE FUNDAMENTAL ISSUE REMAINS
AS OUTLINED IN THE MUSKIE/VANCE EXCHANGE IN THE
MARCH 3, 1978 CONGRESSIONAL RECORD. SENATOR MUSKIE
AWAITS ADMINISTRATION QTE SUGGESTIONS CONSISTENT WITH
INTERNATIONAL POLICY FOR ALTERNATIVE MEANS TO ASSURE
AND ADEQUATE STANDARD OF CARE UNQTE BEFORE CONSIDERING
REMOVING THE IMPOSITION OF PENALTIES FOR THE DISCHARGE
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OF NONREMOVABLE HAZARDOUS SUBSTANCES BY FOREIGN VESSELS.
DOT MEMORANDUM TO NSC DATED MARCH 2 OUTLINES SOME STEPS
BEING TAKEN AND ENVISIONED IN EFFORT TO SATISFY
SENATOR MUSKIE. THE MEMORANDUM IS RECEIVING INTERAGENCY
REVIEW. IT WOULD BE HOPED THAT THE TESTIMONY OF DEPUTY
SECRETARY BUTCHMAN, ASSISTANT SECRETARY MINK, AND THOMAS
JORLING, BEFORE THE MUSKIE SUBCOMMITTEE ON APRIL 17 ON

THE SUPERFUND BILLS MIGHT BE HELPFUL, ALTHOUGH S.2900, NEWLY INTRODUCED BY SENATOR MUSKIE, IS THE ONLY BILL GOING TO HAZARDOUS SUBSTANCES OTHER THAN OIL. THE TESTIMONY, AS IT DISCUSSED THE PRESIDENT'S INITIATIVES OF MARCH 1977 AND THE HERETOFORE REMARKABLY SUCCESSFUL EFFORTS TO IMPLEMENT THOSE INITIATIVES, WILL HOPEFULLY DEMONSTRATE A REAL COMMITMENT ON THE PART OF THE ADMINISTRATION. WHILE SENATOR MUSKIE, AT THE APRIL 17 HEARINGS, WAS RELATIVELY NONCOMMITTAL AS TO THE RESULTS OF THE IMCO CONFERENCE ON TANKER SAFETY AND POLLUTION PREVENTION AND OUR PLANS FOR THE IMCO CONFERENCE ON TRAINING AND CERTIFICATION OF SEAFARERS, HE CERTAINLY DID NOT REJECT THEM OUT OF HAND, AND THE COAST GUARD MATERIALS BEING SUBMITTED FOR THE RECORD WILL HOPEFULLY BE HELPFUL. ON THE OTHER HAND, SENATOR MUSKIE WENT OUT OF HIS WAY TO EXPRESS HIS SATISFACTION WITH AMBASSADOR ELLIOT RICHARDSON'S BRIEFING ON THE PROPOSED STEPS DEVELOPED BY HIS ENVIRONMENT TASK FORCE WITH A VIEW TOWARD IMPROVING THE PROVISIONS OF THE LOS INFORMAL COMPOSITE NEGOTIATING TEXT DEALING WITH THE PROTECTION OF THE MARINE ENVIRONMENT.

3. AS TO THE SUPERFUND BILLS, A LIMITED NUMBER OF FOREIGN POLICY ISSUES ARE CURRENT. THEY ARE HIGHLIGHTED BY S.2900, INTRODUCED BY SENATOR MUSKIE JUST LAST WEEK:
(A) STATE PREEMPTION. S.2900 CONTAINS A NEW VARIATION OF CONFIDENTIAL

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A STATE PREEMPTION CLAUSE WHICH QTE GRANDFATHERS UNQTE EXISTING STATE LIABILITY AND COMPENSATION SYSTEMS. THE DEPARTMENT SUPPORTS THE LONG-HELD ADMINISTRATION VIEW THAT PREEMPTION OF STATE SYSTEMS IS INDISPENSABLE TO AN EFFICIENT AND WORKABLE FEDERAL SYSTEM. EB/TRA/MA RECEIVED AN AIDE MEMOIRE FROM SEVERAL MARITIME STATES LAST WEEK STRESSING THIS POINT.

(B) NOTICE PROVISION. THE ADMINISTRATION BILL, S.1187, CONTAINS A PROVISION REQUIRING NOTICE OF OIL SPILLS BEYOND THE CONTIGUOUS ZONE WHICH POSE A THREAT TO U.S. RESOURCES WHICH IS GENERALLY CONCEDED TO BE MORE ONEROUS FROM A FOREIGN POLICY VIEWPOINT THAN IS THE SIMILAR PROVISION OF THE CLEAN WATER ACT OF 1977 (DUE TO THE ABSENCE OF THE QTE OTHERWISE SUBJECT TO THE JURISDICTION OF THE UNITED STATES UNQTE LANGUAGE CONTAINED IN THE CLEAN WATER ACT, AS INTERPRETED BY SENATOR MUSKIE.) FOR THAT REASON THE OMB CLEARANCE PROCESS APPROVED DELETING THE NOTICE PROVISION FROM THE ADMINISTRATION BILL. SENATOR MUSKIE'S HEARING DID NOT RAISE A QUESTION AS TO THIS MATTER, ITS BEING PUT AS A MATTER OF NOT HAVING TWO DISSIMILAR PROVISIONS

IN THE STATUTES.

(C) HAZARDOUS SUBSTANCES. THE MUSKIE BILL, S.2900, WOULD INCLUDE HAZARDOUS SUBSTANCES OTHER THAN OIL WITHIN THE COVERAGE OF THE SUPERFUND GENERATED BY OIL TRANSFER TAXES. IT IS NOT CLEAR THAT THIS IS A FOREIGN POLICY ISSUE: IT IS POSSIBLY MORE LIKELY ONE OF DOMESTIC WORKABILITY. IT IS POSSIBLE, HOWEVER, THAT THE IMPACT ON THE OIL INDUSTRY DUE TO ITS FUNDING LIABILITY FOR OTHER HAZARDOUS SUBSTANCES COULD HAVE FOREIGN POLICY CONNOTATIONS, AS COULD THE IMPACT ON THE MOVEMENT OF OTHER HAZARDOUS SUBSTANCES DUE TO THE NECESSITY FOR OBTAINING FINANCIAL RESPONSIBILITY COVERAGE. OMB HAS BEGUN INTERAGENCY MEETINGS IN ORDER TO DEVELOP AN
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ADMINISTRATION POSITION ON THIS ISSUE, AND SENATOR MUSKIE HAS BEEN ASSURED OF AN EARLY RESPONSE. EPA IS EXPECTED TO FAVOR INCLUSION OF HAZARDOUS SUBSTANCES AND DOT IS EXPECTED TO OPPOSE THEIR INCLUSION.

(D) FOREIGN CLAIMANTS. YOU WILL NOTE THAT S.2900 AS

PUBLISHED IN THE CONGRESSIONAL RECORD DOES NOT CONTAIN
A PROVISION SIMILAR TO THAT OF S.1187 DEALING WITH
FOREIGN (CANADIAN) CLAIMANTS. HOWEVER, THE ANALYSIS
FOLLOWING THE BILL INDICATES THAT THERE IS SUCH A
PROVISION. A MEMBER OF SENATOR MUSKIE'S STAFF HAS
ADVISED THAT THE PROVISION WAS OMITTED FROM THE BILL
THROUGH OVERSIGHT. RICHARDSON

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